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November 26, 1997

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FEDERAL BUREAU OF INVESTIGATION

Office of the Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Subject: Reply comments-NPRM-MM Docket NO. 97-182,FCC 97-296.

Dear Sir or Madam:

The State of Washington, through its undersigned Assistant Attorney General makes the following comments concerning the Notice of Proposed Rulemaking-MM Docket No. 97-182:

1. The State of Washington opposes the rule proposed by the National Association of Broadcasters (NAB) and the Association for Maximum Service Television (AMST). There is an insufficient record to support the contention that local government action and regulation will prevent the rapid and timely implementation of Digital Television service (hereinafter DTV). Also, the record does not reflect a need for accelerated roll out of "broadcast facilities" other than DTV to justify preemption of state and local regulation. State and local laws intended to regulate siting decisions, some of which may impact shorelines and heavily populated areas, would be preempted for all broadcast facilities under the proposed rule. These decisions include issues of aesthetics, construction standards, and the ability to enforce federal FAA standards, i.e. tower marking and lighting (some as high as 2000 feet) near local airports. In some cases, such as where FAA standards prevent obstructions to air navigation, the state and local zoning laws provide the only means of enforcing these FAA safety standards. In addition, state law in Washington requires the State to protect airports from incompatible land uses. The State performs "obstruction evaluations" to assess the impact on ground and air safety of siting tall towers near the approach and departure paths of local airports. It is in these areas where a significant percent of crashes occur. This protection would be lost.

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2. The State Environmental Policy Act process, which would require consideration of environmental impacts of the facilities and project alternatives with varying impacts, would be ignored if state law is preempted. There would be no consideration of the economic effects of siting these facilities where, for example, there would be a decline in neighboring property values. Air quality may be impacted but not addressed for example, where moving a facility may involve the tear-down of an industrial warehouse. In addition, preemption could result in increasing costs of other forms of telecommunication like rural phone service and 911 services as local government would be paralyzed to prohibit interference with other signals and devices. County Comprehensive Plan policies for transmitting facilities would be disregarded as would Critical Areas Ordinances which prohibit towers in certain sensitive areas to protect the environment.
3. Local timelines will not prevent major networks and other commercial networks from meeting the construction schedules for facilities and public access as long as applications are timely made. 120 days in the recently completed regulatory reform process in Washington State was considered a reasonable time period for issuing administrative decisions after submission of a completed application. Some localities have shortened timelines for municipal bodies to evaluate applications to site facilities in industrial or downtown zones. Some require up to nine months for siting decisions in commercial areas. The time frames in the proposed rule would prevent local government from adequately administering its duties to protect public health, safety and welfare. The time frames would threaten the ability of local government to provide public notice and comment, and to fully determine the range of effects and impacts of the project. Local government is best suited to consider the unique character of the neighborhood in which the facility would be located. The FCC can assist local and state government to speed up the administrative review process by providing technical information and suggestions for resolving disputes in light of the number of applications submitted at any one time.
4. The NAB/AMST petition assumes that state and local concerns have prevented advancement of the goal of DTV expansion. However, there is nearly universal service by the broadcast industry already. Keeping in mind that a form of television is available to all citizens now, any preemption of state and local law should be limited and only that which is necessary to meet the overriding objective for the DTV roll-out. Preemption should not occur at all unless a final action of local government unreasonably delays or

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completely blocks the DTV service. Requiring states and local government to prove that a local construction regulation is based solely on safety or unique health risks unduly burdens the local agency to provide data to support established local construction standards. These standards are frequently adopted from model codes, based on nationally established engineering standards. The burden should be on the applicant to establish that the regulation is unreasonable given the particular circumstances of each case and particularly if the regulatory determination must be made within a 21 to 45 day time period.

5. While Alternative Dispute Resolution (ADR) is beneficial in many circumstances to reach fair and expeditious settlements of disputes, ADR may not be beneficial for "all disputes" as proposed. Administrative decisions are traditionally reviewed by courts. The Commission is a distant forum for the resolution of "all disputes." Some limited disputes may be appropriately decided before the Commission however, deference should be given to local decisions unless demonstrated to be unreasonable by the applicant. Rather than utilizing broad preemption of state and local law, the Commission should collaborate with local governments and the broadcast industry at the outset of the process. This process should be used to identify barriers and create solutions to potential problems in meeting the roll-out deadlines and to address local citizens' concerns.

Please contact Leslie Seffern at (360) 407-5274 if you have questions regarding these comments.

Sincerely,



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